

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF NEW YORK

STELLAR 83 COURT, LLC,

Plaintiff,

-against-

BANK OF AMERICA, N.A.,

Defendant.

NOTICE OF REMOVAL

Civil Action No.:

**TO: THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK**

Defendant, by its undersigned counsel, respectfully notifies this Court of the removal of the above-entitled cause from the Supreme Court of the State of New York, County of Broome, to the United States District Court for the Northern District of New York, pursuant to 28 U.S.C. § 1332, and says as follows:

1. This action is being removed to federal court based upon diversity jurisdiction under 28 U.S.C. § 1332.
2. On January 25, 2012, Plaintiff filed in the Supreme Court of the State of New York, County of Broome, the above-entitled civil action bearing cause number 2012-180 in the records and files of that Court. A copy of the Summons and Complaint is attached hereto as Exhibit "A."

3. Service upon Defendant was effected by a private process server in Charlotte, North Carolina on February 3, 2012.

4. Plaintiff is a Delaware limited liability company with its principal place of business in Woodside, New York.

5. Defendant is a national bank with its principal place of business in Charlotte, North Carolina.

6. This action concerns Plaintiff's claim that Defendant improperly paid certain checks drawn to Plaintiff and other payees.

7. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, to wit, \$3,669,402.28.

8. Defendant files this Notice of Removal of this action from the Supreme Court of the State of New York, County of Broome, in which it is now pending, to the United States District Court for the Northern District of New York.

9. This Notice of Removal is filed within thirty (30) days of the date when Defendant was served with the Summons and Complaint.

WHEREFORE, Defendant respectfully removes the State Court action currently pending in the Supreme Court of the State of New York, Broome County, to this Court and respectfully requests that the United States District Court for the Northern District of New York assume complete jurisdiction over this action.

DATED: February 27, 2012

HISCOCK & BARCLAY, LLP

By: s/Robert A. Barrer

Robert A. Barrer

Bar Roll No. 101099

Office and Post Office Address

One Park Place

300 South State Street

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Facsimile: (315) 425-8544

E-Mail: rbarrer@hblaw.com

REED SMITH, LLP

By: s/Andrew B. Messite

Andrew B. Messite

Bar Roll No. 512456

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New York, NY 10022

Telephone (212) 521-5400

Facsimile (212) 521-5450

E-Mail amessite@reedsmith.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2012, I served the foregoing Notice of Removal upon the following attorney for Plaintiff:

R. Anthony Rupp III, Esq.
Rupp, Baase, Pfalzgraf, Cunningham Coppola LLC
1600 Liberty Building
Buffalo, NY 14202-3502

by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

s/Robert A. Barrer

Robert A. Barrer

Bar Roll No. 101099

Exhibit “A”

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

STELLAR 83 COURT, LLC.
60-01 31st Avenue
Woodside, New York 11377,

Plaintiff,

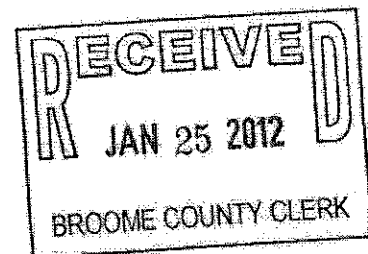
vs.

Index No. 2012-180

BANK OF AMERICA, N.A.
100 North Tryon Street
Charlotte, North Carolina 28202,

Defendant.

SUMMONS



TO DEFENDANT:

YOU ARE SUMMONED to appear in this action by serving your answer to the complaint on the plaintiff's attorney within the time limits stated below.

Broome County is designated as the county where this action will be tried, because one or more of the parties to this action has a principal place of business in that county.

TIME LIMITS TO ANSWER:

- (1) If this summons is served by delivery to you personally within New York State, you must answer the complaint within **TWENTY (20)** days after such delivery.
- (2) If this summons is not served by delivery to you personally within New York State, and not served pursuant to CPLR 312-a, you must answer the complaint within **THIRTY (30)** days after service is complete.
- (3) If this summons is served pursuant to CPLR 312-a, see accompanying **STATEMENT OF SERVICE BY MAIL** for time limits to answer.

IF YOU FAIL TO ANSWER THE COMPLAINT within the time stated,
judgment will be entered against you for the relief demanded in the complaint.

Dated: January 19, 2012
Buffalo, New York

**RUPP, BAASE, PFALZGRAF,
CUNNINGHAM & COPPOLA LLC**
Attorneys for Plaintiff

By: 

R. Anthony Rupp III, Esq.
1600 Liberty Building
Buffalo, New York 14202-3502
(716) 854-3400

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

STELLAR 83 COURT, LLC,

Plaintiff,

v.

Index No.:

BANK OF AMERICA, N.A.,

Defendant.

VERIFIED COMPLAINT

Plaintiff, Stellar 83 Court, LLC, by its attorneys, Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC, as and for its verified complaint against defendant, Bank of America, N.A., alleges as follows:

PARTIES

1. Plaintiff, Stellar 83 Court, LLC ("Stellar 83"), is a registered foreign limited liability company organized under the laws of Delaware with a principal place of business at 60-01 31st Avenue, Woodside, New York.

2. Upon information and belief, at all times hereinafter mentioned, defendant, Bank of America, N.A. ("Bank of America"), is a federally chartered commercial bank with a principal place of business at 100 North Tryon Street, Charlotte, North Carolina.

BACKGROUND FACTS

3. Stellar 83 is engaged as a real estate developer and is the owner of property in Binghamton, New York commonly known as the Midtown Mall.

4. The Midtown Mall is an L-shaped collection of buildings located at 83 Court St., 17 Chenango St., and 16 Commercial Alley that wrap around the Perry Building on Court Street.

5. Stellar 83 is in the process of converting the Midtown Mall into student housing aimed at students of Binghamton University. The project is to include approximately 55 units of student housing and 18,000 square feet of commercial space.

6. Stellar 83 hired PMC Property Group, Inc. ("PMC"), a foreign business corporation organized under the laws of Pennsylvania, to manage construction and renovations at the Midtown Mall property.

7. PMC previously did business under the name Roosevelt's Inc., but amended its name to PMC between 2005 and 2006.

8. Affiliated FM Insurance Company ("Affiliated FM") issued an insurance policy on the Midtown Mall property (the "Insurance Policy") that designated PMC, Roosevelt's

Inc., and Ronald Caplan ("Caplan") as the "Named Insureds," and Stellar 83 as an "Additional Named Insured."

9. On or about December 21, 2010, the Midtown Mall was damaged by a fire of unknown cause and origin.

10. Following the fire, a claim was presented to Affiliated FM by the public adjusting firm of Clarke and Cohen with respect to the fire damage caused to the Midtown Mall.

11. Upon information and belief, Affiliated FM agreed to pay the claim and sent checks ("Checks") to PMC, as the primary named beneficiary.

12. The first Affiliated FM payment was via Bank of America check number 121503, issued on January 18, 2011 in the amount of \$1,163,750.00. The first Check was made payable to the order of PMC, Roosevelt's Inc., Caplan, and "Stellar 83 Court, LLC" [sic] as joint payees. A copy of the first Check is attached hereto as Exhibit A.

13. Upon information and belief, without Stellar 83's knowledge, PMC and/or Caplan presented the first Check for payment at a Bank of America branch without Stellar 83's indorsement.

14. Upon information and belief, Bank of America, as drawee, honored the first Check without Stellar 83's indorsement and made payment to PMC and/or Caplan.

15. The second Affiliated FM payment was via Bank of America check number 122289, issued on April 15, 2011 in the amount of \$2,505,852.28. The second Check was made payable to the order of PMC, Roosevelt's Inc., Caplan, and "Stellar 83 Court, LLC" [sic] as joint payees. A copy of the second Check is attached hereto as Exhibit B.

16. Upon information and belief, without Stellar 83's knowledge, PMC and/or Caplan presented the second Check for payment at a Bank of America branch without Stellar 83's indorsement.

17. Upon information and belief, Bank of America, as drawee, honored the second Check without Stellar 83's indorsement and made payment to PMC and/or Caplan.

FIRST CAUSE OF ACTION
(Conversion)

18. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 17, with the same force and effect as if set forth at length herein.

19. Stellar 83 had a right to possession of the Checks and the proceeds thereof.

20. Stellar 83, PMC, Roosevelt's Inc., and Caplan were joint payees on each Check.

21. Pursuant to NY UCC § 3-116, in order for the Checks to be negotiated, discharged, or enforced, they needed to be indorsed by Stellar 83, PMC, Roosevelt's Inc., and Caplan.

22. Stellar 83 never indorsed the Checks.

23. Upon information and belief, Bank of America honored the Checks and made payment to PMC and/or Caplan, despite Stellar 83's missing indorsements.

24. Bank of America's honoring of and payment on the Checks without Stellar 83's indorsement was an exercise of dominion and control over the instruments that was inconsistent with the rights of Stellar 83.

25. Pursuant to NY UCC § 3-419(1), Bank of America converted the Checks when it honored them without Stellar 83's indorsement.

26. By reason of the foregoing, Stellar 83 has been damaged in the amount of \$3,669,402.28, plus interest.

WHEREFORE, plaintiff, Stellar 83 Court, LLC, demands judgment as follows:

- a. on its first cause of action, as against defendant Bank of America, N.A., in the amount of \$3,669,402.28, plus interest;

- b. together with such other and further relief as the Court deems just and proper.

Dated: January 19, 2012
Buffalo, New York

**RUPP, BAASE, PFALZGRAF,
CUNNINGHAM & COPPOLA LLC**
Attorneys for Plaintiff

By: 

R/ Anthony Rupp III, Esq.

1600 Liberty Building
Buffalo, New York 14202
(716) 854-3400

ATTORNEY VERIFICATION

STATE OF NEW YORK)
 : ss.
COUNTY OF ERIE)

I, R. Anthony Rupp III, Esq., make the following affirmation, under penalty of perjury:

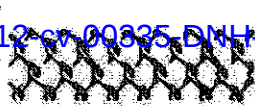
I am a member of Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC, attorneys for plaintiff, Stellar 83 Court, LLC. I have read the foregoing complaint and know its contents. The document is true to my own knowledge, except as to matters stated to be on information and belief. The basis for matters stated on information and belief is my investigation of the subject matter of this action.

This verification is made by me because the plaintiff's principal place of business is outside the county where I maintain my office.

Dated: January 19, 2012
Buffalo, New York



R. Anthony Rupp III, Esq.



THIS IS WATERMARKED PAPER AND CONTAINS INVISIBLE FIBERS.
DO NOT ACCEPT WITHOUT NOTING WATERMARK.
HOLD TO LIGHT TO VERIFY WATERMARK.

DO NOT WRITE / SIGN / STAMP IN THIS SPACE
PAY TO THE ORDER OF
BANK OF AMERICA
FOR DEPOSIT ONLY
PHILADELPHIA MANAGEMENT OF YOUR ENDORSER
SWEEP ACCOUNT
004536004888 5 1 8

JUN 21 00

BANK OF AMERICA NA BAL
00110001384 E2667 94 P05
01/21/11

NUMBER SHOULD APPEAR
RED FROM THIS SIDE

VOID IF BLACK CONTROL NUMBER DOES NOT APPEAR RED ON BACK SIDE • VOID IF PLUM COLORED CHECK BACKGROUND IS MISSING

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Bank of America

Affiliated FM Insurance Company

P. O. Box 7500 Johnston, RI 02819

DATE	CHECK NO.
1/18/2011	121503

PAY: ****One million one hundred sixty-three thousand seven hundred fifty and xx / 100 Dollar****

TO THE ORDER OF.

PMC PROPERTY GROUP, INC.; ROOSEVELT'S INC.; RONALD CAPLAN
AND STELLER 83 COURT, LLC****

CHECK AMOUNT
***\$1,163,750.00

Affiliated FM Insurance Company

[Signature]

Authorized Signature

[Signature]

Authorized Signature

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Bank of America

Affiliated FM Insurance Company

P. O. Box 7500 Johnston, RI 02919

DATE	CHECK NO.
4/15/2011	122289

CHECK AMOUNT
***\$2,505,652.28

PAY: ****Two million five hundred five thousand six hundred fifty-two and 28 / 100 Dollars****

TO THE ORDER OF:

PMC PROPERTY GROUP, INC.; ROOSEVELT'S INC.; RONALD CAPLAN
AND STELLER 83 COURT, LLC***

Affiliated FM Insurance Company



Authorized Signature

Robert M. Fagan

Authorized Signature

CONTROL NUMBER
122930

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BANK OF AMERICA
FOR DEPOSIT ONLY
DO NOT WRITE / SIGN FOUNDER MANAGEMENT CO
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